IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 590 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ARUNABEN VIRENDRAKUMAR SINGAPOREWALA

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

1. Civil Revision Application No. 590 of 2001

MR VC DESAI for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 15/04/2002

ORAL JUDGEMENT

1. Rule. Mr. Munshaw waives service of rule on behalf of respondent. By consent rule is fixed forthwith.

2. This matter is pending at the admission stage, wherein the notice was issued to the respondent

Corporation as back as on 13.6.2001 and from time to time the matter was adjourned at the request of Mr.Munshaw, who appeared for the respondent -Corporation. Even earlier an affidavit of Shri Zaveri, General Power of Attorney holder of petitioner, is filed annexing the judgment of the Division Bench in the matter of V.C.Desai v. Ahmedabad Municipal Corporation dated 1.2.2002 (First Appeal No.75/99), in which in respect of the claim of interest the Division bench has relied upon the decision in the case of Kerala State Electricity Board v/s M.R.F. Ltd., reported in 1996 (1) SCC 597 and in paragraph 27 it is observed as under:-

"27. It is required to be noted that Assessee is required to pay amount of tax and if it is found to be excessive or unwarranted, then the excess amount is required to be refunded immediately.When the Corporation is enjoying the amount of public which is ultimately found that it was not entitled to collect, then there is no reason as to why the assessee should be deprived of the benefit of the interest which otherwise he was entitled if he had deposited the amount in the Bank or would have invested the money with a view to earn.The Corporation has used these funds and the assessee is deprived of the benefit of this amount. In our opinion, the decision of the Apex Court in the case of Kerala State Electricity Board vs. M.R.F. Limited, reported in 1996 (1) SCC 597 has been rightly pressed into service by the Assessee. In paragraph 24, the Apex Court observed as under:-

"In giving full and complete relief in an action for restitution, the Court has not only power but also a duty to order for mesne profit, damages, costs, interest etc. as may deem expedient and fair conforming to justice to be done in the facts of the case. But in giving such relief, the Court should not be obligious of any unmerited hardships to be suffered by the party against whom action by way of restitution is taken. In deciding appropriate action by way of restitution, the court should take a pragmatic view and frame relief in such a manner as may be reasonable, fair and practicable and does not bring about unmerited hardship to either of the parties."

In the facts and circumstances of the instant case, we are of the view that mere refund of the excess amount collected by way of tax from the petitioner is not enough, but Corporation must be directed to pay 15% interest on the amount refunded. The Corporation is, therefore, directed to pay, within four weeks from today,

15% interest on the amount refunded from the date of collection of the excess amount by the Corporation till the date the excess amount is refunded to the petitioner."

3. In view of the decision of the Division Bench of this Court and as observed by the Division Bench,it is the duty of the Corporation to give effect to the judgment of the Court immediately. It is further found from paragraph 3 of the affidavit of Shri Zaveri that in view of the High Court Judgment in First Appeal No.75/99, the petitioner is entitled for 15% interest on the principle amount of Rs.18381/-- and the petitioner has claimed interest from 1.4.98 till the date of the Suit and while making calculation, it is averred by the deponent that the petitioner - plaintiff is entitled for an amount of Rs.9492/- calculating interest at the rate of 15% from 1.4.98 to 10.9.2001 on the principle amount of Rs.18361/-. It is also the case of the petitioner that the respondent - Corporation has vide cheque No.047779 of Indian Bank has paid Rs.18381/-- to the petitioner and the petitioner has accepted the said amount of refund without prejudice to her rights and contentions for claiming interest at the rate of 18% in the Suit.

4. The challenge is in respect of the order passed by the learned Chamber Judge dated 24.8.2000 in Summary Suit No.6005/98 filed by the petitioner against the Corporation wherein the conditional leave to defend was granted to the defendant Corporation by depositing a sum of Rs.12,000/-- and the Suit was ordered to be transferred to List of Long Causes and the written statement was to be filed within 6 weeks thereafter from the date of the order. The petitioner has filed Suit under Order 37 Rule 2 of the C.P.C. claiming refund of excess amount paid by her, which was accepted by the Corporation, and the plaintiff has claimed refund with interest at the rate of 18%. Shri Desai has also brought to my notice the decision of this court in the matter of M.N.Sheth v. Muni. Corporation of Ahmedabad, reported in 2002 (1) GLH 72 wherein in paragraph 8, the Division Bench has observed as under:-

"8..... Before us, Mr. Nanavati submitted that the Municipal Corporation is not carrying out orders of the Court, as a result of which the Court work is also increased apart from the fact that the citizens who are law abiding citizens are required to spend huge amounts for litigation, time of others is also wasted by the officers of the Corporation. A request was

made that not only special compensation be awarded, but the amount of tax paid with interest at the rate of 18% per annum should be refunded. Like the other Acts, when from the taxpayers there is delayed payment, interest is charged and at the time of refund excess amount is returned with interest to the assessee. There is no reason why the Corporation, which is enjoying the funds of the assessee, which it is not entitled to, should not be directed to refund the amount with 15% interest. It is directed that the amount of refund shall be paid with interest @ 15% per annum."

5. Mr.Munshaw, learned advocate appearing for the Corporation, is not in a position to assail the order under challenge in view of the decision of the Division Bench wherein this court has also held that the Corporation is duty bound to refund the amount and interest calculated at the rate of 15%. As found, the petitioner has calculated the amount of interest at the rate of 15% on the principle amount of Rs.18361/-calculated from 1.4.98 to 10.9.2001 which comes to Rs.9492/-- and the Corporation is directed to pay the said interest to the petitioner forthwith. Mr. Munshaw, though asked for time earlier, could not get instruction looking to the prevailing situation in the State. However, it is not possible for him to contend that the petitioner is not entitled for interest, which she has claimed at the rate of 15%. It is also an admitted fact that the Corporation has already paid the principle amount to the petitioner plaintiff under the cheque issued on 10.9.2001 and the petitioner has, without prejudice to her right and contention for calculating interest at the rate of 18%, accepted the same. In view of the order passed by the Division Bench, the Corporation is liable to pay interest at the rate of 15%. Accordingly, the petitioner is entitled for the interest at the rate of 15% calculated for the period from 1.4.98 to 10.9.2001 i.e. Rs.9492/--. There was no counter affidavit filed by the respondent Corporation to the affidavit of the petitioner dated 19.2.2002. The Corporation is accordingly directed to pay the said amount to the petitioner on or before 30.6.2002. Rule is accordingly made absolute.

In view of the order passed above, nothing survives in the Suit, which is pending before the trial court. The only thing that the petitioner is required to do is to file Purshish for refund of the Court fees.

(D.K.Trivedi,J)

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